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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/545,658	04/10/2000	Rick A. Briggs	CKING.036CP1	2398
20995 7590 07/22/2009 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER OMOTOSHO, EMMANUEL				
ART UNIT		PAPER NUMBER		
3714				
NOTIFICATION DATE		DELIVERY MODE		
07/22/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
eOAPilot@kmob.com

### Office Action Summary

**Application No.**

09/545,658

**Applicant(s)**

BRIGGS ET AL.

**Examiner**

EMMANUEL OMOTOSHO

**Art Unit**

3714

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 33-40, 42-45, 52-54, 56-62, 65 and 67-70 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 33-40, 42-45, 52-54, 56-62, 65 and 67-70 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 05/05/09
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notices of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 33-40,42-45,52-54,56-62,65 and 67-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5865680 to Briggs in further view of **US Patent No. 6,426,741 B1 to Goldsmith** US Patent No. 5114155 to Tillery et al. and US Patent No. 6371375 B1 to Ackley et al.
3. In regards to claims 33-35, 67,69: Briggs teaches an interactive gaming system comprising one more play modules disposed within a play structure and configured to receive or support said one or more play participants playing therein or thereon each of said one or more play modules (Fig 1). Briggs further teaches the play modules comprising multiple play elements comprising one or more interactive challenges configured to be played by one or more participants as part of an interactive game (Fig 1 Col 2 lines 20-40). Briggs also teaches the idea of the game challenges being completed in sequential order before another module can be played or completed (Col 4 lines 22-25).
4. Briggs further teaches using kinetic energy to operate one or more play elements (Col 3 lines 1-5). Briggs lacks in explicitly teaching a toy wand operable by at least one

of said one or more play participants by waving, shaking, stroking and/or tapping said toy wand in a predetermined manner to transmit a first signal to wirelessly actuate at least one of said multiple play elements, the toy wand further comprising a memory configured to store identification information for uniquely identifying said at least one play participant of said one or more play participants and (ii) store progress information indicative of a progress of the at least one play participant in the interactive game, the toy wand being further configured to wirelessly transmit at least one of said identification information and said progress information to at least one of said multiple play elements during participation by said at least one play participant in said one or more interactive games or challenges.

5. However, Briggs reference teaches that any desirable game theme can be implemented with the play structure (Col 3 lines 3-5).

6. Goldsmith teaches of a wand that wirelessly sends illuminating signals to a device through the use of a transmitter (abstract). The user operates the wand by moving the wand in a specific way (Col 1 line 60-Col2 line 15). The wireless wand calculates the velocity and positional data of the motion impacted by the user (Col 2 lines 5-18), it then interprets the illuminating signal and the derived data in order to perform a predetermined operation based on the interpretation. **Goldsmith further teaches that the invention is not limited to sending illuminating signals, that the information could also be conveyed to the device through the use of radio frequency waves (col 3:26-34).**

7. **Wizard or fairy type theme which involves the use of a magic wand is knowledge generally available to one having ordinary skill in the art (i.e. Harry Potter).** Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have implemented a wizardry/fairy type game theme with Briggs play structure where one of the play elements comprises of Goldsmith's wand (Goldsmith teaches the application of the invention in a gaming environment Col 3 lines 10-12 and 26-30) where in the kinetic energy required to activate such play element is shaking, waving, stroking, and/or **tapping (e.g. waving a magic wand to cast a spell)**. This will further add to the entertaining factor of Briggs invention (Briggs Page 1 lines 9-11). The motivation comes from Briggs Col 3 lines 3-5 where it states that other game themes could be implemented.
8. Briggs as modified above fails to teach the toy wand comprising a memory configured to store identification information for uniquely identifying said at least one play participant of said one or more play participants, store progress information indicative of a progress of the at least one play participant in the interactive game, the toy wand being further configured to wirelessly transmit said identification information and said progress information to at least one of said multiple play elements during participation by said at least one play participant in said one or more interactive games or challenges. Goldsmith's wand only consists of a transmitter and the controlled device only consists of a receiver. However, connecting a transceiver (i.e. a transmitter and receiver) to an electronic device so that the device will be able to transmit and receive signals is knowledge generally available to one having ordinary skill in the art (see

Ackley col 6:35-55). **Furthermore, using a memory to store player/game information and a transceiver inside a player control device in an interactive play set is also well known in the art (for example, see the player badge and nodes in Gabai et al US Patent 6352478).** Goldsmith's invention will not cease to work if a receiver is substituted for a transceiver and a transmitter is substituted for a transceiver. A predictable result of receiving and transmitting signals will be achieved. As shown above Briggs teaches the goal of the game is for each participant to use kinetic energy to activate one or more play elements to complete one of several necessary steps in a chain of triggering events. Goldsmith teaches that the wand is capable of storing program data and event driven information into a memory (col 2:47-51). To store player identification data into this memory and to transfer this information to a device (i.e. in this case, each play elements) that is activated by the wand user would have been obvious to one having ordinary skill in the art. This way, Briggs system can incorporate means to account for each mission completed by the participants.

**9. Briggs failed to teach wherein the at least one of said multiple play elements is further configured to adjust said one or more interactive challenges using at least said progress information. Briggs as modified above teaches the use of a magic wand with a memory device. Briggs also teaches the idea of the game challenges being completed in sequential order before another module can be played or completed (Col 4 lines 22-25). It would have been obvious to store the player's progress in the wand's memory storage device so as to electronically facilitate the sequential completion of challenges as taught by Briggs. Thus, it**

**would have been obvious to one having ordinary skill in the art to have the wand configured to adjust said one or more interactive challenges using at least said progress information.**

10. In regards to claim 36 and 62, Briggs teaches the play structure to be a multi-level play structure (Col 5 lines 9-13).

11. In regards to claims 38 and 53, Briggs teaches the play modules arranged sequentially and interconnected by one or more slides such that a first group of games or challenges associated with a first play module are necessary to be played or completed before a second group of games or challenges associated with a second play module can be played (Col 5 lines 46-57 Col 9 lines 38-47).

12. Briggs teaches the game system further comprising one or more challenge connections bridging two or more play modules, comprising a slide, rope bridge, trolley, swing, cargo net or ladder (Col 5 lines 46-57).

13. In regards to claims 37,39,40, 42-45, 52, 54, 56-61 and 65 Briggs and Goldsmith teaches the features of all the present invention as described above but lacks in explicitly disclosing

- a. A scoreboard for displaying the progress of the participants
- b. Storing and receiving data through the use of radio frequency without the use of a central network system
- c. Actual storage of a player progress data and identification on a portable indicium and allowing access and determination of player progress with or without a central network system

14. Tillery teaches the idea of storing a player's progress data and identification data during a game session (lines 12-17 of abstract; Fig. 1, #60 and #45; player card readers #45 read and write to the player cards- col. 4, lines 42-46). The examiner further interprets this as communicating with a read/write devices that is associated with the interactive game/challenge. It would have been obvious to a person of ordinary skill in the art at the time of the invention to include this feature disclosed by Tillery in the system of Briggs modified by Goldsmith. This feature would provide the system a way to facilitate the saving/pausing of a game especially in the common gaming case where the player leaves the game for a bathroom break.

15. Tillery also teaches the idea of displaying players progress and standings on a display (scoreboard) (Abstract last line). It would have been obvious to a person of ordinary skill in the art at the time of the invention to include the display feature disclosed by Tillery in the system of Briggs modified by Goldsmith. This feature would aid the players in analyzing their current standings and progress in the game.

16. However, Tillery still fail to explicitly disclose the actual storage of a player progress data and identification on a portable indicium and allowing access and determination of player progress through the use of radio frequencies with or without a central network system

17. Ackley et al. teaches a method for associating data with a wireless memory device. Ackley et al. further teaches that the method can be used for storing and retrieving data, utilizing radio frequency tag having a memory for storing the data with a first identifier stored in memory (Abstract). Therefore, it would have been obvious for



someone of ordinary skill in the art at the time of invention to incorporate Ackley et al.'s method into the wand as a way of tracking the wand/player and wirelessly monitoring the challenges/spell successfully casted by player. This will also further provide a more compact and cheaper play structure since the system is wireless and no central network system is required.

18. In regards to claim 43, Briggs teaches the facility comprises one or more play modules sized and configured to receive or support said one or more play participants playing in, on or around each said play module (Fig 1.)

19. Claims 68 and 70: Briggs as modified above failed to teach wherein said toy wand is configured to produce at least one of vibration and sound by said toy wand in response to receiving said wireless communications from said at least one transceiver. However, to add a vibrating type notification signal to the already taught light and sound notification signal is a matter of design choice well within the skill set of an ordinary skilled artisan.

### ***Response to Arguments***

20. Applicant's arguments, in regards to the newly added limitations, filed 3/11/08, have been fully considered but they are not persuasive. The detailed office action above has been expanded to address these new limitations.

21. In regards to applicant's argument that Goldsmith's wand is not configured to receive communications, please see par 8 above.

22. In response to applicant's argument that there is no motivation/suggestion to combine Briggs with Goldsmith and Tillery, applicant should respectfully note that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found **either in the references themselves or in the knowledge generally available to one of ordinary skill in the art**. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Please see pars 7-8 above.

23. In response to applicant's argument that the examiner's conclusion of obviousness in view of Briggs as modified by Goldsmith is based upon improper hindsight reasoning, applicant should respectfully note that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

24. Applicant's arguments, in regards to the newly added limitations, filed 05/05/09, have been fully considered but they are not persuasive.

25. On page 13, applicant argues, "For example, the Examiner appears to take Official Notice on page 5 of the Final Office Action that it would have been obvious to one having ordinary skill in the art "[t]o store player identification data into [the wand] memory and to transfer this information to" play elements activated by the wand user.

The Examiner's reasoning to support this conclusion is that in "[t]his way, Briggs system can incorporate means to account for each mission completed by the participants."

26. The examiner respectfully disagrees. The examiner cited Goldsmith, Ackley and Gabai to support all examiners' reasoning.

27. On page 13, applicant argues, "As discussed in Applicant's November 10, 2008 Amendment, Applicant respectfully traverses this conclusion of obviousness as being improper. In particular, as discussed above, Goldsmith is directed to an input device that emits light signals detected by a camera in order to control a computer presentation. There is no teaching, suggestion, or reasoning for using the Goldsmith input device for storing and transmitting player identification information or progress information in an interactive game or for using the Goldsmith input device with a transceiver as disclosed in connection with Ackley's reader device."

28. However, as clearly shown above, Goldsmith's invention is not limited to light signals detected by a camera. Just like the present invention, Goldsmith's invention teaches the use of radio frequency signals.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to EMMANUEL OMOTOSHO whose telephone number is (571)272-3106. The examiner can normally be reached on m-f 10-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (571) 272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EO

/Ronald Laneau/

Primary Examiner, Art Unit 3714

7/17/09